

REMARKS

I. Summary of the Office Action

In the Office Action, the Examiner required restriction under 35 U.S.C. § 121 to one of the following inventions:

- I. Claims 21-32, 35, and 36 drawn to a container or a method of stacking containers, subclass 696;
- II. Claim 32 drawn to a method of stacking a plurality of containers;
- III. Claim 33 drawn to an automated bail arm placement system; and
- IV. Claim 34 drawn to a method of moving a plurality of bail arm.

Applicant submits that the Application is in condition for allowance and respectfully requests same.

II. Traverse and Provisional Election

In response to the restriction requirement, Applicant respectfully traverses the restriction requirement (to Groups and Species) and requests the requirement be withdrawn. Pursuant to M.P.E.P. § 803, a restriction requirement is proper only if (1) the inventions are independent or distinct **as claimed**, and (2) there would be a serious burden on Examiner if the restriction is not required.

Here, Applicant acknowledges the Examiner's finding that the inventions may be patentably distinct from each other. However, Applicant respectfully submits that a search and examination of a single claim set would likely cover all aspects of the application. This would not seem to impose a serious burden on the Examiner. As to the request for an election of species, clearly a *prima facie* showing has not been made for insisting upon the restriction. Nothing has been represented to Applicant to show a serious burden if restriction is not required. Therefore, Applicant respectfully requests that the restriction requirement at least to a species be withdrawn because there would not be a serious burden if restriction is not required.

To the extent the Examiner does not agree with Applicant on the above points, Applicant provisionally elects to prosecute the claims of Group I associated with Claims 21-32, 35, and 36.

Examiner is reminded that M.P.E.P. § 802.01 states that the distinctness required for restriction means the subjects "ARE PATENTABLE (novel and unobvious) OVER EACH

OTHER” (emphasis in original). (See also M.P.E.P. § 808.02, which states that where “related inventions are not patentably distinct as claimed, restriction . . . is never proper.” The Patent Office has also stated “it is imperative the requirement should never be made where related inventions as claimed are not distinct.” M.P.E.P. § 806).

The Examiner must adopt these positions in order to enter the restriction requirement. It follows that these same positions may be relied upon by Applicant during examination of this and continuing applications. If Examiner is not taking these positions, then it is submitted that the restriction requirement should be withdrawn upon reconsideration.

Applicant encourages Examiner to contact the undersigned if some deficiency in this Reply is perceived.

Conclusion

Applicant submits that the Application is in condition for allowance and respectfully request same.

Respectfully submitted,

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